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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/815,553   | 04/01/2004  | Jeffrey George Orr   | 013118              | 7141             |
| 7590   | 09/12/2006  |                      | EXAMINER            |                  |
| Keisling Pieper & Scott PLC<br>1 East Center Street, Suite 217<br>Fayetteville, AR 72701 |             |                      | RADI, JOHN A        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3641                |                  |

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                 |                         |  |
|------------------------------|---------------------------------|-------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>          | <b>Applicant(s)</b>     |  |
|                              | 10/815,553                      | ORR, JEFFREY GEORGE     |  |
|                              | <b>Examiner</b><br>John A. Radi | <b>Art Unit</b><br>3641 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 June 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5-9 and 11-27 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 10 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-9 and 11-27 is/are rejected.
- 7) Claim(s) 1, 21, 22 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5-9, and 11-27 have been considered but are moot in view of the new ground(s) of rejection.

With regard to applicant's argument that the air tank is substantially proximate to the paintball marker, the examiner respectfully disagrees. First of all, the term "proximate" can be interpreted to encompass the teaching of Bofill locates the air tank near the base of the paintball marker. Furthermore, if applicant were to amend the claims to include a more precise limitation of the distance from the base of the gun to the tank, it would still not yield an invention that is patentably distinct as Bofill teaches a removable dovetail connection between the firearm base and a gas cartridge but doesn't make any limitations as to the size of the bracket. Absent some unexpected result or further evidence of patentability, modifying the teaching of Bofill by altering the size of the bracket is not a non-obvious modification. In fact, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the size of the bracket of Bofill, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

As to applicant's argument that placing the gas cartridge nearer to the base of the gun teaches away from the disclosed prior art, the examiner respectfully disagrees. A teaching away should be more than merely reciting of a single embodiment of the

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invention, it should be of a nature substantial enough to dissuade one skilled in the art from practicing said teaching.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner provided a motivation to combine on page 5 of the office action. The cited text from Goff is added here for your convenience. The use of a ball/detent assembly is well known in the mechanical arts as a method of securely attaching two members that need to be easily removed at a later time, as the prior art discloses:

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The pin-lock or detent is easily released by application of a horizontal force to the top strap sight end that overcomes the spring biasing, with the pin or plunger traveling out of the opening allowing the strap flanges 50 to travel forwardly along the undersurface of the receiver rails until again aligned with the openings therebetween whereat the top strap is free to be lifted off from the receiver. This connector less coupling simplifies opening the weapon receiver to provide access to 55 the spring biased bolt therein.

*From Column 2 of Goff*

A more detailed rejection of the amended claims follows.

***Claim Objections***

Claims 1, 21, and 22 objected to because of the following informalities: the term "discreet" was added which incorrectly refers to a marked prudence or modesty. For expediency sake, the examiner believes the intended word was "discrete" which refers to a part being separate and distinct, and the examiner will continue to examine the claims based on said assumption. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-9, 11-14, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bofill (US 5927261).

Bofill teaches an attachment for securing an air tank or canister to a paintball marker, the attachment comprising: a first attachment piece (20) formed on the paintball marker, the first attachment piece having a body portion (30) by means which secured to the paintball marker and a fastening portion (25); and a second attachment piece (40) having a body portion by means of which it is secured to the air tank (figure 1) and a fastening portion, the fastening portion of the second attachment piece being configured to releasably engage (abstract, references to "adjustable" see also figures 4-6) with the fastening portion the first attachment piece to secure the air tank to the paintball marker.

With regard to the amended portion of claim 1, Bofill teaches the attachment pieces being discrete components: part 20 is distinct from the base of the gun and component 40 is distinct/discrete from the air tank 60. With regard to the air tank (60) and the base of the gun being "substantially proximate" to each other, the examiner believes that Bofill teaches such as they are both located a mere inches from each other.

With respect to claim 2 wherein the first attachment piece is configured so as to be attachable to the frame of the paintball marker, part 20 attaches via bolts 26, figure 7.

With respect to claim 3, wherein the attachment is to the underside frame of a paintball marker, Bofill teaches that the mount can be installed in a variety of positions as suits the user, and that the most convenient position would be a low profile orientation relative to the main axis of the paint gun (col. 2, lines 14-16).

With respect to claim 5, wherein the first attachment (30) piece is integral (24) with the body of the paintball marker. It has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326.

With respect to claims 6-9 and 17, wherein the fastening portion comprises at least one rail slidably engaged via a dovetail connection, see figures 4-6 in reference to the article 22.

With respect to claim 11, wherein the second piece (40) is integral with the tank. It has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326.

With respect to claim 12, the second attachment piece is located on a neck portion of the air tank, see figure 7, article 40.

With respect to claim 13 and 14, regarding the tightening member on the first attachment piece, see attachment screws 46.

With respect to claim 16, regarding a plurality of screws to attach to the paintball marker, see figure 4, the multiple of articles 26.

With respect to claims 18-20, regarding a projecting member from which the second attachment piece connects at a distance, see figure 7, article 30 which forms an elongated channel onto which the second (40) attachment piece is releasably secured.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bofill (US 5927261) further in view of Goff et al (US4573394). Bofill teaches the invention as described above with respect to claim 1, but doesn't teach the following features:

With respect to claim 15, regarding the attachment means comprising a ball-and-detent between the first and second pieces. Bofill doesn't teach the use of a ball-and-detent system for securing the pieces however Goff teaches the use of a ball-and-detent combination (figure 2, 43) to lock a sliding member to a rail. Goff provides the motivation for such a ball-and-detent securing system to provide an easily releasable securing mechanism (Col. 2, line 40). Therefore, it would have been obvious to one skilled in the art at the time of invention to use a ball-and-detent securing mechanism as taught by Goff with the air tank attachment system as taught by Bofill.

With respect to claims 22-27, Boffil teaches the claimed invention as described above with respect to claims 1-3, 6-9, 11-14, and 16-21 but doesn't explicitly show or claim a paintball marker. However, the invention of Bofill is drawn to a bracket that's intended use is disclosed as being to attach a gas cartridge to a paint pellet gun. Therefore it would have been obvious to one skilled in the art at the time of invention that the mounting bracket as taught by Bofill is intended to be used on a pellet gun, and therefore would read on the combination claim 22-27.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Radi whose telephone number is 571-272-5883. The examiner can normally be reached on M-F 8-5.

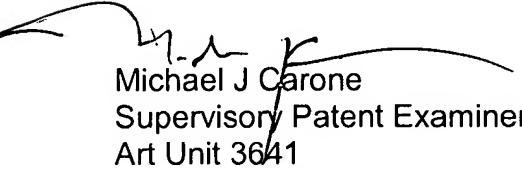
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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